

DOCKETING STATEMENT

NLRB v. Professional Security Officers and Investigators of America and
Case Name: Professional Security Officers and Investigators of America, Local 101
Appeal No. (if available) : 15-9517
Court/Agency Appeal From: National Labor Relations Board
Court/Agency Docket No.: 14-CB-126322 District Judge: _____
Party or Parties filing Notice of Appeal/Petition: National Labor Relations Board

I. TIMELINESS OF APPEAL OR PETITION FOR REVIEW

A. APPEAL FROM DISTRICT COURT

1. Date notice of appeal filed: _____
 - a. Was a motion filed for an extension of time to file the notice of appeal? If so, give the filing date of the motion, the date of any order disposing of the motion, and the deadline for filing notice of appeal:

 - b. Is the United States or an officer or an agency of the United States a party to this appeal? _____
2. Authority fixing time limit for filing notice of appeal:

Fed. R. App. 4 (a)(1)(A) _____	Fed. R. App. 4(a)(6) _____
Fed. R. App. 4 (a)(1)(B) _____	Fed. R. App. 4(b)(1) _____
Fed. R. App. 4 (a)(2) _____	Fed. R. App. 4(b)(3) _____
Fed. R. App. 4 (a)(3) _____	Fed. R. App. 4(b)(4) _____
Fed. R. App. 4 (a)(4) _____	Fed. R. App. 4(c) _____
Fed. R. App. 4 (a)(5) _____	

Other: _____
3. Date final judgment or order to be reviewed was filed and **entered**

on the district court docket: _____

4. Does the judgment or order to be reviewed dispose of **all** claims by and against **all** parties? *See* Fed. R. Civ. P. 54(b).

(If the order being appealed is not final, please answer the following questions in this section.)

- a. If not, did district court direct entry of judgment in accordance with Fed. R. Civ. P. 54(b)? When was this done?

- b. If the judgment or order is not a final disposition, is it appealable under 28 U.S.C. § 1292(a)? _____

- c. If none of the above applies, what is the **specific** statutory basis for determining that the judgment or order is appealable? _____

5. Tolling Motions. *See* Fed. R. App. P. 4(a)(4)(A); 4(b)(3)(A).

- a. Give the filing date of any motion under Fed. R. Civ. P. 50(b), 52(b), 59, 60, including any motion for reconsideration, and in a criminal appeal any motion for judgment of acquittal, for arrest of judgment or for new trial, filed in the district court:

- b. Has an order been entered by the district court disposing of that motion, and, if so, when? _____

6. Bankruptcy Appeals. (To be completed only in appeals from a judgment, order or decree of a district court in a bankruptcy case or from an order of the Bankruptcy Appellate Panel.)

Are there assets of the debtor subject to administration by a district or bankruptcy court? _____

Please state the approximate amount of such assets, if known.

B. REVIEW OF AGENCY ORDER (To be completed only in connection with petitions for review or applications for enforcement filed directly with the Court of Appeals.)

1. Date petition for review was filed: March 3, 2015
 2. Date of the order to be reviewed: January 29, 2015
 3. Specify the statute or other authority granting the court of appeals jurisdiction to review the order: Section 10(e) of the National Labor Relations Act, as amended (29 U.S.C. §§ 151, 160(e))
 4. Specify the time limit for filing the petition (cite specific statutory section or other authority): n/a
-

C. APPEAL OF TAX COURT DECISION

1. Date notice of appeal was filed: _____
(If notice was filed by mail, attach proof of postmark.)
2. Time limit for filing notice of appeal: _____
3. Date of entry of decision appealed: _____
4. Was a timely motion to vacate or revise a decision made under the Tax Court's Rules of Practice, and if so, when? *See* Fed. R. App. P. 13(a) _____

II. LIST ALL RELATED OR PRIOR RELATED APPEALS IN THIS COURT WITH APPROPRIATE CITATION(S). If none, please so state.

none

III. GIVE A BRIEF DESCRIPTION OF NATURE OF ACTION AND RESULT BELOW.

On October 22, 2014, the NLRB issued an amended complaint and notice of hearing. Following proceedings before an Administrative Law Judge, on December 15, 2014, a decision was issued finding that Respondent had violated the Act and recommending an order be issued requiring that the Respondent cease and desist and take certain affirmative actions. The case was transferred to the Board and Respondent was notified that exceptions to the ALJ findings must be filed by January 12, 2015. Respondent did not file exceptions. In the absence of exceptions to the ALJ findings, on Jan. 29, 2015, the Board issued an order adopting the ALJ findings and recommended order.

IV. ISSUES RAISED ON APPEAL.

The Board is entitled to summary entry of a judgment enforcing its orders.

V. ADDITIONAL INFORMATION IN CRIMINAL APPEALS.

- A. Does this appeal involve review under 18. U.S.C. § 3742(a) or (b) of the sentence imposed? _____
- B. If the answer to question in A is yes, does the defendant also challenge the judgment of conviction? _____
- C. Describe the sentence imposed. _____

- D. Was the sentence imposed after a plea of guilty? _____
- E. If the answer to question D is yes, did the plea agreement include a waiver of appeal and/or collateral challenges? _____
- F. Is defendant on probation or at liberty pending appeal? _____
- G. If the defendant is incarcerated, what is the anticipated release date if the judgment of conviction is fully executed? _____

NOTE: In the event expedited review is requested, the defendant shall consider whether a transcript of any portion of the trial court proceedings is necessary for the appeal. Necessary transcripts must be ordered at the time of appeal by completing and delivering the transcript order form to the clerk of the district court when a notice of appeal is filed. Defendant/appellant must refrain from ordering any unnecessary transcript as this will delay the appeal. If the court orders this appeal expedited, it will set a schedule for preparation of necessary transcripts, for designation and preparation of the record on appeal, and for filing briefs. If issues other than sentencing are raised by this appeal, the court will decide whether bifurcation is desirable.

VI. INDICATE WHETHER ORAL ARGUMENT IS DESIRED IN THIS APPEAL. If so, please state why.

Oral argument is not desired.

VII. ATTORNEY FILING DOCKETING STATEMENT:

Name: Linda Dreeben Telephone: 202-273-2960

Firm: National Labor Relations Board

Email Address: AppellateCourt@nlrb.gov

Address: 1099 14th Street, N.W., Washington, D.C. 20570

PLEASE IDENTIFY ON WHOSE BEHALF THE DOCKETING STATEMENT IS FILED:

A. ☐ Appellant

☒ Petitioner

☐ Cross-Appellant

B. PLEASE IDENTIFY WHETHER THE FILING COUNSEL IS

☐

Retained Attorney

☐

Court-Appointed

☒

Employed by a government entity

(please specify National Labor Relations Board)

☐

Employed by the Office of the Federal Public Defender.

/s/ Linda Dreeben

Signature

March 9, 2015

Date

☒

Attorney at Law

NOTE:

A copy of the court or agency docket sheet, the final judgment or order appealed from, any pertinent findings and conclusions, opinions, or orders, any motion filed under Fed. R. Civ. P. 50(b), 52(b), 59, or 60, including any motion for reconsideration, for judgment of acquittal, for arrest of judgment, or for new trial, and the dispositive order(s), any motion for extension of time to file notice of appeal and the dispositive order, and the notice of appeal or petition for review **must be submitted with the Docketing Statement**, except as otherwise provided in Section I of the instructions.

The Docketing Statement must be filed with the Clerk via the court's Electronic Case Filing System (ECF). Instructions and information regarding ECF may be found on the court's website, www.ca10.uscourts.gov.

This Docketing Statement must be accompanied by proof of service.

The following Certificate of Service may be used.

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

NATIONAL LABOR RELATIONS BOARD	:	
	:	
Petitioner	:	
v.	:	No. 15-9517
	:	
PROFESSIONAL SECURITY OFFICERS AND	:	
INVESTIGATORS OF AMERICA AND PROFESSIONAL	:	Board Case No.:
SECURITY OFFICERS AND INVESTIGATORS	:	14-CB-126322
OF AMERICA, LOCAL 101 (DECO, INC.)	:	
	:	
Respondent	:	

CERTIFICATE OF SERVICE

The undersigned certifies that a copy each of the Board's corrected docketing statement has this day been served by first class mail upon the following parties at the addresses listed below:

Kris Kelly, Union Pres.
Professional Security Officers and
Investigators of America, Local 101
7626 SW 89th St.
Oklahoma City, OK 73169

Steve Jurina
Professional Security Officers
and Investigators of America
1936 County Rd. 1211
Tuttle, OK 73089

/s/ Linda Dreeben
Linda Dreeben
Deputy Associate General Counsel
National Labor Relations Board
1099 14th Street, N.W.
Washington, D.C. 20570

Dated at Washington, D.C.
this 10th day of March, 2015

Oklahoma City, OK

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

PROFESSIONAL SECURITY OFFICERS
AND INVESTIGATORS OF AMERICA AND
PROFESSIONAL SECURITY OFFICERS
AND INVESTIGATORS OF AMERICA,
LOCAL 101 (DECO, INC.)

Case 14-CB-126322

and

GLENN LEE

ORDER

On December 15, 2014, Administrative Law Judge Arthur J. Amchan of the National Labor Relations Board issued his Decision in the above-entitled proceeding and, on the same date, the proceeding was transferred to and continued before the Board in Washington, D.C. The Administrative Law Judge found that the Respondent-Union has engaged in certain unfair labor practices, and recommended that it take specific action to remedy such unfair labor practices.

No statement of exceptions having been filed with the Board, and the time allowed for such filing having expired,

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, and Section 102.48 of the National Labor Relations Board Rules and Regulations, the Board adopts the findings and conclusions of the Administrative Law Judge as contained in his Decision, and orders that the Respondent-Union, Professional Security Officers and Investigators of America and Professional Security Officers and Investigators of America, Local 101 (DECO, Inc.), its

officers, agents, and representatives, shall take the action set forth in the recommended Order of the Administrative Law Judge.

Dated, Washington, D.C. January 29, 2015.

By direction of the Board:

/s/Farah Z. Qureshi

Associate Executive Secretary

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

PROFESSIONAL SECURITY OFFICERS AND
INVESTIGATORS OF AMERICA AND
PROFESSIONAL SECURITY OFFICERS AND INVESTIGATORS
OF AMERICA, LOCAL 101
(DECO, INC.)

and

Case 14-CB-126322

GLENN LEE, an Individual

Lyn R. Buckley, Esq., for the General Counsel.
Kris Kelley, for the Respondent.

DECISION

STATEMENT OF THE CASE

Arthur J. Amchan, Administrative Law Judge. On November 13, 2014, I issued an order dismissing Respondent's Answer and deeming all allegations in the complaint admitted. I also directed the General Counsel to submit a brief or memorandum to explain how the complaint allegations constituted a violation of the Act. I issued the November 13 order because of the Respondent Union's failure to comply with a show cause order that I issued on November 6, 2014. On November 6, I ordered Respondent to file a sworn affidavit that it would appear at the hearing in this matter scheduled for November 18, 2014.

I issued the November 6 Show Cause Order because Respondent Union had repeatedly ignored requests to participate in a conference call and had given every indication that it did not intend to show up at the hearing.

The General Counsel has filed a brief as I directed. The Complaint alleges that Respondent Union violated Section 8(b)(1)(A) is refusing to refund special project dues, also known as restrictive break dues, collected for the months of July, August and September 2013 to at least 8 bargaining unit employees.

Respondent filed an Answer to the original complaint on August 13, 2014, in which it admitted that it did not refund the dues as alleged in the complaint, but refunded this money only to members who were in good standing as of the end of September 2013. Respondent asserted that, or implied, that those unit employees to whom refunds were not paid were delinquent in their dues payments. Given Respondent's lack of cooperation in this matter, specifically its failure to comply with the Notice to Show Cause, I find that Respondent failed to refund the special project dues as alleged and that it had no factual or legal basis for doing so.

As a legal matter, I conclude that Respondent has a duty under Section 8(b)(1)(A) to refund the special project dues in a manner that is not arbitrary, discriminatory or in bad faith. I find on the basis of the record in this case, that Respondent Union failed to refund the special project dues in this case in a manner that was arbitrary, discriminatory, or in bad faith and that it breached its fiduciary duty to the unit employees to whom refund payments were not made, in violation of Section 8(b)(1)(A) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I shall order it to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended¹

ORDER

The Respondent, Professional Security Officers and Investigators of America and Professional Security Officers and Investigators of America, Local 101, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Withholding the refund of special project dues that was collected in July, August and September 2013 to any bargaining unit employees.

(b) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act

(a) Within 14 days of this Order, refund to all unit employees who have not previously received this refund, the amounts collected as special project dues for the months of July, August and September 2013.

(b) Within 14 days after service by the Region, post at its business office and other places where notices to its members are customarily posted, copies of the attached notice marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 14,

¹ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

² If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to members are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its members by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C., December 15, 2014.

Arthur J. Amchan
Administrative Law Judge

APPENDIX

NOTICE TO MEMBERS

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain on your behalf with your employer
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities.

WE WILL NOT refuse to refund special project dues that was collected in July, August and September 2013 to any bargaining unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, within 14 days of the Board's order, refund special project dues that was collected in July, August and September 2013 to all bargaining unit employees who have not received such refunds previously.

PROFESSIONAL SECURITY OFFICERS AND
INVESTIGATORS OF AMERICA AND
PROFESSIONAL SECURITY OFFICERS AND
INVESTIGATORS OF AMERICA, LOCAL 101
(DECO, INC.)

(Employer)

Dated _____ By _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

1222 Spruce Street, Room 8.302, Saint Louis, MO 63103-2829
(314) 539-7770, Hours: 8 a.m. to 4:30 p.m.

The Administrative Law Judge's decision can be found at www.nlr.gov/case/14-CB-126322 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, D.C. 20570, or by calling (202) 273-1940.



THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (314) 539-7780.

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES**

**PROFESSIONAL SECURITY OFFICERS AND
INVESTIGATORS OF AMERICA AND
PROFESSIONAL SECURITY OFFICERS AND
INVESTIGATORS OF AMERICA, LOCAL 101
(DECO, INC.)**

and

Case 14-CB-126322

GLENN LEE, an Individual

**ORDER DISMISSING RESPONDENT'S ANSWER AND DEEMING ALL ALLEGATIONS
IN THE COMPLAINT ADMITTED**

Respondent, Professional Security Officers and Investigators of America and Professional Security Officers and Investigators of America, Local 101, has repeatedly ignored the requests from this office to participate in a conference call regarding this matter and has asserted that it is defunct and has no assets. Therefore I issued an Order on November 6, 2014 directing Respondent to file with the Division of Judges no later than November 12, 2014, a sworn affidavit that it intends to appear before this judge at the hearing scheduled on November 18, 2014 in Oklahoma City, Oklahoma. Respondent has failed to comply with this Order.

Therefore, I hereby dismiss Respondent's Answer. I also find that all the allegations in the complaint are deemed admitted and cancel the hearing scheduled for November 18. **The General Counsel is hereby directed** to submit a brief or memorandum no later than December 10, 2014 as to how the complaint allegations constitute a violation of the Act.

The Federal Rules of Civil Procedure (FRCP) are not binding on the National Labor Relations Board. However, they provide useful guidance in regulating the


course of NLRB proceedings, *Brink's Inc.*, 281 NLRB 468 (1986). I issue this order in accordance with the guidance provided by those rules.

Rule 16 of the FRCP states that the court may order the attorneys and any unrepresented parties to appear for one or more pretrial conferences for such purposes as expediting disposition of the action; improving the quality of the trial through more thorough preparation and facilitating settlement. The trial judge may issue a scheduling order setting the dates for pretrial conferences. The trial judge may also require attendance at a pretrial conference to make stipulations and admissions and to facilitate the just, speedy and inexpensive disposition of the action. Finally, the court is authorized on motion, or on its own, to impose sanctions authorized by FRCP Rule 37 (b)(2)(A) (ii)-(vii) if a party or its attorney fails to appear at a pretrial conference, or fails to obey a scheduling or other pretrial order.

The sanctions authorized by FRCP Rule 37 (b)(2)(A) (ii)-(vii) include: striking pleadings in whole or in part, dismissing the action or proceeding in whole or in part; and rendering a default judgment against the disobedient party.

I find that Respondent's lack of cooperation in this matter and failure to assure this judge and the other parties that it will show up for the trial warrants the imposition of the sanctions that I hereby impose: striking its Answer and deeming all allegations in the complaint as established facts.

Dated: November 13, 2014
Washington, D.C.


Arthur J. Amchan
Deputy Chief Administrative Law Judge

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES**

**PROFESSIONAL SECURITY OFFICERS AND
INVESTIGATORS OF AMERICA AND
PROFESSIONAL SECURITY OFFICERS AND
INVESTIGATORS OF AMERICA, LOCAL 101
(DECO, INC.)**

And

Case 14-CB-126322

GLENN LEE, an Individual

ORDER TO SHOW CAUSE

Respondent, the Professional Security Officers and Investigators of America and Professional Security Officers and Investigators of America, Local 101 (Deco, Inc.) is hereby **ORDERED** to show cause as to why its Answer should not be dismissed by filing with the Division of Judges **no later than Wednesday, November 12, 2014** a sworn affidavit that it intends to appear before this judge on November 18, 2014 at 9:00 central time at the Oklahoma City Workers Compensation Court, 1915 N. Stiles, Oklahoma City, Oklahoma 73105 to litigate the allegations in the complaint.

This show cause order is issued for the following reasons: 1) Respondent's repeated ignoring of requests from this office to participate in a conference call regarding this matter; 2) Respondent's assertion that it is defunct and has no assets.

If Respondent fails to comply with this Order, the Answer will be dismissed, and I will issue an Order finding that all the allegations in the complaint are deemed admitted.

Dated: November 6, 2014
Washington, D.C.


Arthur J. Amchan
Deputy Chief Administrative Law Judge